

PATENT

Atty Docket No.: 200310026-1

App. Ser. No.: 10/776,061

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the amendments above and the following remarks. Claims 1-16 are pending, of which claims 1, 12, and 13 are independent.

Claims 1-16 were provisionally rejected under obviousness-type double patenting over claims 1-15 of copending publication number 2005/0173771A1 in view of Ohmori (6,920,065).

Claims 1-5 and 11-15 were rejected under 35 U.S.C. §103(a) as allegedly being obvious in view of the combination of Tran and Ohmori.

Claims 1-5 and 11-15 were rejected under 35 U.S.C. §103(a) as allegedly being obvious in view of the combination of Perner and Ohmori.

These rejections are respectfully traversed.

Claims 6-10 and 16 were not rejected over prior art and, thus, the Applicant assumes that these claims are considered allowable over the prior art of record.

Drawing and Information Disclosure Statement

The undersigned thanks the Examiner for accepting the drawings filed on February 11, 2002 and for considering the reference cited in the IDS filed on February 11, 2002.

Objections to the Specification

The specification was objected to for minor informalities. The undersigned thanks the Examiner for pointing out the typographical errors contained in the specification. The errors

PATENT

Atty Docket No.: 200310026-1
App. Ser. No.: 10/776,061

have been corrected in accordance with the Examiner's suggestions. Therefore, withdrawal of these objections is requested.

Provisional Claim Rejections Under Double Patenting

Claims 1-16 were provisionally rejected under obviousness-type double patenting over claims 1-15 of copending publication number 2005/0173771A1 in view of Ohmori (6,920,065).

Applicant will consider filing a Terminal Disclaimer to overcome this rejection when the claims are allowed over the prior art of record.

EVIDENCE OF COMMON OWNERSHIP

Tran (US 6,856,105) and Perner (US 2005/0169034) were, at the time the invention described in the claims of application 10/776061 (the instant application) were made, commonly owned by Hewlett-Packard.

The Applicant notes that this statement, alone, is sufficient to establish common ownership, See MPEP 70602(1)(2)II.

Claim Rejection Under 35 U.S.C. §103

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in MPEP § 706.02(j):

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference

PATENT

Atty Docket No.: 200310026-1

App. Ser. No.: 10/776,061

(or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Therefore, if the above-identified criteria are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

The Official Action sets forth a rejection of Claims 1-5 and 11-15 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the disclosure contained in U.S. Patent No. 6,865,105 B1 to Tran in view of U.S. Patent No. 6,920,065 to Ohmori. This rejection is respectfully traversed, because Tran does not qualify as prior art under § 103(a).

In accordance with § 103(c), Tran does not qualify as prior art for a § 103(a) rejection against the instant application. The instant application was filed on February 11, 2004. Tran was filed on September 22, 2003 and issued on March 8, 2005, after the filing date of the instant application. Therefore, Tran only qualifies as prior art under § 102(e). However, at the time the invention described in the instant application was made, Tran and the instant application shared common ownership and a common assignee, Hewlett-Packard. Tran, therefore, does not qualify as prior art for a § 103(a) rejection and cannot be used to reject the claims of the instant application under § 103(a). (See MPEP § 706.02(I)(1)). Accordingly, the Examiner is respectfully requested to withdraw this rejection and allow the claims.

The Official Action sets forth a rejection of Claims 1-5 and 11-15 under 35 U.S.C. § 103(a) as allegedly being unpatentable over the disclosure contained in U.S. Patent Publication No. 2005/0169034A1 to Perner in view of U.S. Patent No. 6,920,065 to Ohmori.

PATENT

Atty Docket No.: 200310026-1

App. Ser. No.: 10/776,061

This rejection is respectfully traversed, because Perner does not qualify as prior art under § 103(a).

In accordance with § 103(c), Perner does not qualify as prior art for a § 103(a) rejection against the instant application. The instant application was filed on February 11, 2004. Perner was filed on February 3, 2004 and issued on August 4, 2005, after the filing date of the instant application. Therefore, Perner only qualifies as prior art under § 102(e). However, at the time the invention described in the instant application was made, Perner and the instant application shared common ownership and a common assignee, Hewlett-Packard. Perner, therefore, does not qualify as prior art for a § 103(a) rejection and cannot be used to reject the claims of the instant application under § 103(a). (See MPEP § 706.02(I)(1)). Accordingly, the Examiner is respectfully requested to withdraw this rejection and allow the claims.

PATENT

Atty Docket No.: 200310026-1

App. Ser. No.: 10/776,061

Conclusion

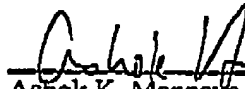
In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited.

Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to deposit account no. 08-2025.

Respectfully submitted,

Dated: January 17, 2006

By


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